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March 18, 2025

By ECF

Hon. Barbara Moses
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

MEMO ENDORSED

**Re: *Exist, Inc. v. Tokio Marine America Insurance Company*
Southern District of New York, Case No.: 1:22-cv-01679;
Second Circuit Court of Appeals, Case No.: 25-402**

Request to Reschedule Settlement Conference

Dear Judge Moses,

Our office represents Defendant-Appellee Tokio Marine America Insurance Company (“Tokio Marine”) and I write pursuant to Section 6 of the Order Scheduling Conference (Your Honor’s Individual Practices in Civil Cases, Rule I(C) to request that the Court reschedule the Settlement Conference scheduled for March 26, 2025 at 2:15 p.m. (the “Settlement Conference”). Tokio Marine makes this request in light of the fact that the matter is pending before the Second Circuit Court of Appeals, Case No.: 25-402 (the “Appellate Court Proceedings”) and Plaintiff Exist, Inc. (“Exist”) has now entered its appearance therein on March 14, 2025. In addition, following the submission of the parties’ respective settlement correspondence, Tokio Marine does not believe a Settlement Conference would be meaningful at this time.

This is the first request for an adjournment of the Settlement Conference. We notified Exist of our intention to make this application, however, Exist has advised that they do not consent to the sought adjournment. We note that there is a presently scheduled date of April 9, 2025 for the parties to submit a joint status update on settlement, but the requested adjournment does not otherwise affect any other presently scheduled dates.

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On February 19, 2025, Tokio Marine filed a Notice of Interlocutory Admiralty Appeal pursuant to 22 U.S.C.A § 1292(a)(3). Yesterday, on March 17, 2025, the Second Circuit Court of Appeals issued an Order requiring that Tokio Marine's brief be filed on or before June 4, 2025. In addition, the Court of Appeals has set the matter down for a CAMP conference on May 5, 2025. Exist filed its appearance with the Court of Appeals on March 14, 2025.

It is further submitted that the presently pending Appeal will have the effect of ultimately determining the rights and obligations of the parties, for amongst other reasons, the *de novo* review of the enforceable contractual one year time bar as a matter of federal maritime law rather than New York State law. Therefore, Tokio Marine intends to move before the District Court for a stay of all proceedings pending the hearing and determination of the Appellate Court Proceedings.

In view of all the foregoing, Tokio Marine does not believe the parties can meaningfully move forward with the Settlement Conference on March 26, 2025, but rather, that the matter must proceed before the Second Circuit Court of Appeals. In addition, now that issue is fully joined before the Court of Appeals with Exist's appearance, Tokio Marine intends to seek a stay of all District Court proceedings.

We thank the Court for its consideration.

Respectfully,

Frank Jordan

Frank Jordan

Partner

for Kennedys

cc: Counsel of Record (via ECF)

For the reasons discussed during the March 21, 2025 pre-settlement conference, and in light of the parties' confidential letter updating the status of their settlement negotiations, received today, defendant's request to adjourn the settlement conference is DENIED. SO ORDERED.



Barbara Moses
United States Magistrate Judge
March 24, 2025